

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT HARVEY,

Defendant-Appellant.

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UNPUBLISHED

May 21, 2009

No. 284856

Wayne Circuit Court

LC No. 07-023789-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

MEMORANDUM.

Defendant appeals as of right from his bench trial conviction of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 19 months to 20 years' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

While executing a search warrant, an officer observed defendant toss a "clear object" about six feet before the object hit a wall and landed on the floor. Another officer testified that the first officer identified the item as a "clear baggie." The second officer looked in the designated area and found a plastic sandwich baggie that contained 108 yellow dime-sized ziplock bags of cocaine.

Defendant argues that there was insufficient evidence to establish the element of possession. He avers that the charge was based solely on his presence in the house, the fact that he fled, and the assertion that he threw an object. We disagree.

Possession may be actual or constructive. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). "[A] person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. Instead, some additional connection between the defendant and the contraband must be shown." *Id.*, quoting *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748, amended 441 Mich 1201 (1992). "[C]onstructive possession exists where the defendant has the right to exercise control over the narcotics and has knowledge of their presence." *Hardiman*, *supra* at 421 n 4.

The trial court found the officers' testimony credible and concluded that the clear item thrown was a pack of cocaine. In a bench trial, as with a jury trial, a challenge to the sufficiency of the evidence requires that the evidence be viewed in a light most favorable to the prosecution

to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). We should not interfere with the factfinder’s role of determining the weight of evidence, the credibility of witnesses, the inferences that can be fairly drawn, and the weight to accord inferences. *Id.*; *Hardiman*, *supra* at 428.

The first officer did not say that just any item was thrown. He identified the item as a “clear object,” whereas the second officer said he was told it was a clear baggie. Moreover, another person who was present in the house testified that he had not seen any drugs lying around before the police arrived. The finding of possession was not based solely on defendant’s presence or flight, but rather was premised on a reasonable inference that the clear object thrown was the baggie recovered. The evidence was sufficient to support defendant’s conviction.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot  
/s/ Douglas B. Shapiro